

# **EXHIBIT 3**

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UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA  
VIDEO GAMING TECHNOLOGIES, INC., )  
Plaintiff, )  
vs. ) CASE NO. 17-CV-454-GKF-JFJ  
CASTLE HILL STUDIOS, LLC., et al., )  
Defendants. )

TRANSCRIPT OF RECORDED PROCEEDINGS  
DECEMBER 6, 2017  
BEFORE THE HONORABLE JODI F. JAYNE, MAGISTRATE JUDGE PRESIDING  
**MOTION HEARING**

***Greg Bloxom, RMR, CRR***  
United States Court Reporter  
Northern District of Oklahoma

A P P E A R A N C E S

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1 PROCEEDINGS:

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3 **THE DEPUTY COURT CLERK:** This is case number 17-CV-  
4 454-GKF-JFJ, Video Gaming Technologies, Inc. vs. Castle Hill  
5 Studios -- or Studios -- sorry -- LLC, et al.

6 Counsel, please enter your appearance for the record.

7 **MR. LUTHEY:** Good morning, Your Honor.

8 **THE COURT:** Good morning.

9 **MR. LUTHEY:** Dean Luthey for the plaintiff, and I have  
10 with me as my co-counsel, who have been admitted pro hac vice  
11 in this case, Mr. Gary Rubman and Mr. Michael Sawyer of the  
12 District of Columbia.

13 **THE COURT:** Good morning. Welcome to Tulsa.  
14 Mr. Rubman; is that right?

15 **MR. RUBMAN:** It's actually Rubman, but --

16 **THE COURT:** Rubman. Okay.

17 **MR. RUBMAN:** -- people say either.

18 **THE COURT:** Rubman and Mr. Sawyer. Okay.

19 **MR. HODGES:** James Hodges for the Castle Hill  
20 defendants. With me is Robert Gill of Washington and Jonathan  
21 Jacobs of Washington.

22 **THE COURT:** Okay. Which is which?

23 **MR. HODGES:** Mr. Gill (INDICATING).

24 **THE COURT:** Mr. Gill? Okay.

25 **MR. GILL:** Good morning, Your Honor.

***Greg Bloxom, RMR, CRR***

United States Court Reporter  
Northern District of Oklahoma

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1 secret aspects of this case, I think that would be fine, but I  
2 think these cases are unique for a number of reasons and I  
3 think that's one. I think we know, going into this, that  
4 there's going to be a lot of data that's going to be designated  
5 under that order and there's going to be a lot of those  
6 motions.

7 **THE COURT:** Sure.

8 **MR. GILL:** So, I think you may be tired of seeing them  
9 on your docket after a while. So, -- in any event, but like I  
10 said, I do agree with that and --

11 **THE COURT:** Okay.

12 **MR. GILL:** -- but obviously we'll abide by whatever  
13 Your Honor says on that.

14 With regard to the content of the order, I do have some  
15 objections. You know, the form order that this district uses  
16 does not prohibit client access to just plain confidential  
17 information, and the red-line document that I got struck  
18 through the language that provided for party access, which was  
19 the basis for my comment in my brief.

20 Counsel is correct that there was other language in that,  
21 and I address this my brief also, that talked about having a  
22 representative have access to that.

23 But, you know, here's a position that I find myself in:  
24 I've come into the case that's already pending and I'm trying  
25 to get a grip on what's going on factually and procedurally and

1 legally, and I'm drinking out of a fire hose, so to speak, and  
2 I'm trying to figure out what I need to do in order to be able  
3 to defend the case and communicate meaningfully with the client  
4 with whom I have no prior relationship before this case, and I  
5 feel like my client has a right to be able to participate  
6 meaningful in the defense of this action.

7 And my concern in looking at the order, first of all, in  
8 all my years of practice, and you can probably tell by the  
9 absence of hair on my head and the gray in my beard, that  
10 that's a number that begins with a 3 at this point, I've never  
11 seen a protective order that limited client access to just  
12 plain confidential information. I've seen it with respect to  
13 highly confidential information but just not plain confidential  
14 information, and I think that is an unworkable restriction.

15 I would like to have the opportunity to discuss this with  
16 the client, particularly in a trade secret case because, you  
17 know, one of the defenses in these types of cases is this is  
18 the particular claim that's been made for which trade secret  
19 protection is sought, and I need to be able to discuss with the  
20 client what that specific claim is. I would like for the  
21 client to be able to see whatever the evidentiary material is  
22 that underlies that complaint because the client may be able to  
23 say, in response to that, "No, we didn't use this or anything  
24 like this. This is how we did it and I need that in order to  
25 be able to defend the claim." And if I can't have that

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1 communication with the client, that significantly hampers my  
2 ability to be able to defend the case, and that's my concern.  
3 I'm looking at this for a logistical, you know, not trying to  
4 be hypertechnical about it. This is a very basic thing for me.  
5 I'm concerned about being able to meaningfully communicate with  
6 my client and have the client be able to meaningful assist me  
7 in the defense of the case.

8 **THE COURT:** Why haven't you met and conferred with  
9 them about this protective order? It sounds like there's a  
10 whole lot you agree on.

11 **MR. GILL:** Well, there is, but, you know, to be  
12 candid, what happened was, you know, I felt like no good deed  
13 was going unpunished with respect to my communications with  
14 counsel. I told them candidly that what my view was on trade  
15 secret discovery about how I needed to know more of the  
16 substance of their claims to be able to respond, and it was  
17 obvious from the request for the meet-and-confer they were  
18 trying to game the system and file the motion to compel  
19 discovery against me before our responses are even due. And  
20 once it was obvious to me that was what was happening, frankly,  
21 I didn't feel there was enough good faith involved to make it  
22 worthwhile, and I thought, "You want to run to court and file a  
23 motion before my discovery is due? I'm perfectly happy to  
24 discuss this with the judge and have the judge resolve the  
25 issue in a way that, like it or not, it'll be done, that's what

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1 If there's anything we can do to minimize the risk to the court  
2 from that, because as I understood Your Honor's comment  
3 earlier, one of the reasons that you like to have these  
4 sequential motions to seal is because you do sometimes get  
5 inquiries from outside parties like --

6 **THE COURT:** No. I'm sorry I wasn't clear on that.  
7 I've never seen an inquiry from an outside party on a motion to  
8 seal. What I was saying was that the underlying principle of  
9 those is that most of the time we expect documents and filings  
10 to be public, --

11 **MR. GILL:** Right.

12 **THE COURT:** -- and unless you tell us a good reason  
13 why they should be sealed, we like to have things public, if  
14 possible.

15 **MR. GILL:** Right.

16 **THE COURT:** And particularly what I think -- I wasn't  
17 here when they enacted that local rule, but part of the problem  
18 is people would have one exhibit that needed to be sealed, or  
19 maybe even four lines in an exhibit that needed to be sealed  
20 and they filed the whole motion under seal and nobody can see  
21 it and nobody has public access to it, and there's just no  
22 reason for that.

23 So, no, to answer your question, I've never seen an outside  
24 inquiry. That's not my concern. My concern is the court's  
25 ability to deny your motion to seal if it does not believe the

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1 entire thing needs sealed.

2 **MR. GILL:** Okay. Fair enough.

3 **THE COURT:** So, yes.

4 Okay. Is there anything else that we need to take up here  
5 today, Mr. Rubman?

6 **MR. RUBMAN:** No, Your Honor.

7 **THE COURT:** Mr. Gill?

8 **MR. GILL:** No, ma'am. Thank you.

9 **THE COURT:** Thank you both.

10 **THE DEPUTY COURT CLERK:** All rise.

11 **THE COURT:** Court's adjourned.

12 (PROCEEDINGS CLOSED)

13 **REPORTER'S CERTIFICATION**

14 WHILE NOT PRESENT TO STENOGRAPHICALLY REPORT THE FOREGOING  
15 PROCEEDINGS, I CERTIFY THAT IT WAS TRANSCRIBED TO THE BEST OF  
16 MY ABILITY FROM A DIGITAL AUDIO RECORDING.

17 CERTIFIED: s/Greg Bloxom  
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